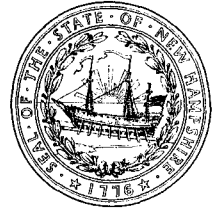




The State of New Hampshire  
**Department of Environmental Services**



**Michael P. Nolin**  
Commissioner

Donald A. and Evelyn J. Crate  
40 Sargent Street  
Enfield, New Hampshire 03748

Re: 672 Bog Road,  
Enfield, New Hampshire  
Wetlands File # 2005-0875

**ADMINISTRATIVE ORDER**

No. WD 05 - 17

June 28, 2005

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Donald A. and Evelyn J. Crate, pursuant to RSA 485-A:22 and RSA 482-A:6. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, NH.
2. Donald A. and Evelyn J. Crate are individuals having a mailing address of 40 Sargent Street, Enfield, New Hampshire 03748.

**C. Statement of Facts and Law**

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
2. Env-Ws 415.02(y) defines significantly altering terrain to include disturbing more than 100,000 square feet of contiguous area.
3. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
4. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.

5. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
6. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A."
7. Wt 304.06(a) states that "erosion and siltation measures shall be installed prior to the start of work in wetlands' jurisdiction, shall be maintained, and shall remain in place during construction until all disturbed surfaces are stabilized."
8. Wt 303.02(f) defines projects located in or adjacent to designated prime wetlands (under RSA 482-A:15) as a major project .
9. Pursuant to 482-A:15, the Town of Enfield has designated prime wetlands which were accepted by the Wetlands Board on June 22, 1993.
10. Donald A. and Evelyn J. Crate are the owners of property located at 672 Bog Road, Enfield, New Hampshire, more particularly identified on Town of Enfield Tax Map 1 as Lot 3 ("the Property").
11. Enfield designated prime wetland #14 runs through the center of the Property.
12. An unnamed stream on the Property flows into Enfield designated prime wetland #14 within the Property.
13. On April 26, 2005 and on May 2, 2005, DES personnel conducted inspections of the Property. During the inspections, DES personnel observed the following:
  - a. Site disturbance (gravel mining) in excess of 100,000 square feet;
  - b. Excavation had taken place through 300 linear feet of the banks and bed of a seasonal stream on the Property;
  - c. The banks of the stream had not been stabilized and were eroding;
  - d. Sediment was observed in the stream, downstream of the disturbed portion of the stream, for 500 linear feet, adjacent to Enfield designated prime wetland #14; and,
  - f. Solid waste material had been stockpiled on the Property, including tires, scrap metal, metal drums, and old vehicles.
14. A review of DES records shows that neither a standard "Dredge and Fill" permit application nor an "Alteration of Terrain" (site specific) permit application had been submitted by the Crates for the activities on the Property described in Paragraph 13.

#### **D. DETERMINATION OF VIOLATIONS**

1. Donald A. and Evelyn J. Crate have violated RSA 485-A:17 by altering more than 100,000 square feet of terrain without a permit from DES.
2. Donald A. and Evelyn J. Crate have violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install erosion control measures on the Property.
3. Donald A. and Evelyn J. Crate have violated RSA 485-A:17 and Env Ws 415.09(j) by failing to stabilize areas within the Property.
4. Donald A. and Evelyn J. Crate have violated RSA 482-A:3, I by conducting work in the banks and bed of a seasonal stream without a permit from DES.
5. Donald A. and Evelyn J. Crate have violated RSA 482-A:3, I and Wt 304.06(a) by failing to install erosion and siltation control measures on the Property prior to conducting work in wetlands' jurisdiction.
6. Donald A. and Evelyn J. Crate have violated RSA 482-A:3, I by placing fill in wetlands and surface waters without a permit from DES.

#### **E. ORDER**

Based on the above findings, DES hereby orders Donald and A. and Evelyn J. Crate as follows:

1. **Within 10 days of this Order**, prepare a temporary stabilization plan ("Plan") for the Property, and submit the Plan to DES for approval. The Plan shall include a schedule for implementing the measures described in the Plan.
2. Implement the approved Plan on the Property according to the schedule detailed in the Plan.
3. **Within 30 days of the date of this Order**, submit a restoration plan for the restoration of the wetland and seasonal stream to DES for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and shall include:
  - a. A plan with dimensions, drawn to scale, showing:
    - i. existing conditions on the site, with wetland boundaries and land topography; and
    - ii. proposed conditions after reestablishing the jurisdictional areas;
  - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
  - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration areas;
  - d. A description of the proposed construction sequence, equipment, methods for accomplishing restoration, and anticipated restoration compliance date.

- e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES no later than September 15, 2005, and September 15, 2006.
4. Retain a certified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with Item 3 above and to submit the restoration progress reports.
5. Implement the restoration plan proposed in accordance with Item 3 above only after receiving written approval, and as conditioned, by DES.
6. **Within 60 days of the date of this Order**, submit to DES an application for a Site Specific permit for the Property. The application shall be prepared by an engineer licensed in the State of New Hampshire, and in accordance with Env-Ws 415.05.
7. Submit the temporary stabilization plan, the restoration plan, the Site Specific permit application and the names of professionals retained, to:

Ana Ford Herrero  
Site Specific Program  
DES Water Division  
6 Hazen Drive - P.O. Box 95  
Concord, NH 03302-0095

#### **F. APPEAL**

Any person aggrieved by determinations D.1 through D.3 of this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

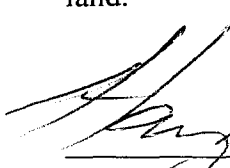
Any person aggrieved by determination D.4 through D.6 of this Order may apply to DES for reconsideration with respect to those matters within 20 days from the date of this Order. A motion for reconsideration or rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion.

Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.

#### **G. OTHER PROVISIONS**

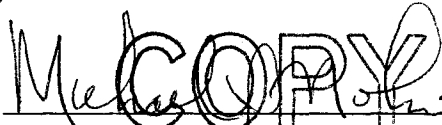
Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Donald and Evelyn Crate remain obligated to comply with all applicable requirements. DES will continue to monitor the Crate's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Grafton County Registry of Deeds so as to run with the land.



**COPY**

Harry T. Stewart, P.E., Director  
Water Division



**COPY**

Michael P. Nolin, Commissioner  
Department of Environmental Services

CERTIFIED MAIL # 7004 0750 0001 2491 9229

cc: Gretchen R. Hamel, Legal Unit Administrator  
James P. Martin, Public Information Officer, DES  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Tracey Boisvert, Compliance Supervisor, DES Wetlands  
Mary Pinkham-Langer, NH Department of Revenue  
cc: Grafton County Registry of Deeds  
Enfield Planning Board  
Enfield Conservation Commission